

power to provide measures by which taxes may be enforced and collected. Section 49 of the organic act provided that "the legislative power of the District shall extend to all rightful subjects of legislation within the District, consistent with the Constitution of the United States and the provisions of this title"; and section 57 provided that "the legislative assembly shall not have power to tax the property of the United States, nor to tax the lands or other property of nonresidents higher than the lands or other property of residents."

The court referred to the legal tender cases and then went on to state that "the general grant of power to legislate on all rightful subjects, and so forth, is by inclusion, an express grant of power to legislate on this subject of taxation, except as limited in section 57." There is another case which bears on the subject, namely, *Welsh v. Cook* (97 U.S. 541, 542) [1879].

It can thus be seen that a local legislative body in the District of Columbia was given authority to enact revenue legislation affecting the District of Columbia; that pursuant to such authority that local legislative body enacted such revenue legislation; and the cited cases established judicial sanction for such enactment. If a local legislative

body can pass valid revenue legislation for the District of Columbia, it appears equally clear that the Senate of the United States has authority to initiate a revenue bill concerning the District of Columbia. That conclusion certainly would be consistent with the Senate's share of responsibility in exercising exclusive legislative power over the District under article I, section 8, paragraph 17, of the Constitution.

There is a further aspect to the issue raised by the House last week in connection with Senate Joint Resolution 52. This is the question whether an appropriation bill comes within the purview of article I, section 7, paragraph 1 of the Constitution, relating to the raising of revenue. However, the issue of whether a general appropriation bill may originate in the Senate, notwithstanding long established custom to the contrary, warrants much fuller discussion than will here be made. As a Member of the Senate, I categorically dispute the House's contention in respect to Senate Joint Resolution 52.

The Senate did not take further action on Senate Joint Resolution 52.

D. CONGRESS AND THE BUDGET; IMPOUNDMENT

§ 21. In General; Congressional Budget Act

Concern about escalating federal spending immediately after World War II resulted in enactment of a budget procedure in the

Legislative Reorganization Act of 1946. Under this procedure, the House Committee on Ways and Means and Committee on Appropriations, and the Senate Committee on Finance and Committee on Appropriations or their sub-

committees were required to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget.⁽⁸⁾ This procedure was designed to coordinate revenue with expenditures and thereby more readily identify and limit deficits.⁽⁹⁾

However, until the adoption of the Congressional Budget and Impoundment Control Act of 1974, the Congress lacked a comprehensive uniform mechanism for establishing priorities among its budgetary goals and for determining national economic policy regarding the federal budget. Despite periodic efforts to centralize budget authority in appropriations committees, budget responsibility re-

mained fragmented throughout the Congress. Both taxing and spending actions were taken over a period of many months and by way of many different legislative measures. The size of the budget, and whether it should be in surplus or deficit, were not subject to effective controls. The budget process was, in fact, merely the sum of dozens of isolated and usually unrelated actions. Backdoor spending—that is, spending outside the regular appropriation process—represented a significant percentage of all spending. And outlays (that is, actual expenditures) were not always controlled by Congress, since congressional budget actions often reached only to the authority to obligate funds, resulting in little direct relationship in some cases between congressional budget actions and actual expenditures in any given year.

In 1972, the Congress established a Joint Study Committee on Budget Control and directed it to study:

. . . [T]he procedures which should be adopted by the Congress for the purpose of improving congressional control of budget outlay and receipt totals, including procedures for establishing and maintaining an overall view of each year's budgetary outlays which is fully coordinated with an overall view of anticipated revenues for that year.⁽¹⁰⁾

8. See §21.2, *infra*, for an illustration of this concurrent resolution.

9. For discussion of the role of Congress in the budget process, see, Fenno, Richard F., Jr., *The Power of the Purse*, Little, Brown and Co., Inc. (1966); Pressman, Jeffrey L., *House v Senate*, Yale University Press, New Haven, Conn. (1966); Wallace, Robert Ash, *Congressional Control of Federal Spending*, Wayne State University Press, Detroit, Mich. (1960).

This section has been compiled by Norah Schwarz, J.D., and has been drawn in part from a report of the House Committee on the Budget entitled "The Congressional Budget and Impoundment Control Act of 1974: A General Explanation," November 1974.

10. Pub. L. No. 92-599, 92d Cong. 2d Sess.

The joint committee issued its final report in April 1973,⁽¹¹⁾ and legislation was introduced in both Houses to implement the report's recommendations, including the addition of anti-impoundment procedures. Both Houses overwhelmingly approved the measure, which became known as the Congressional Budget and Impoundment Control Act of 1974 (hereinafter referred to as "the Act"). The bill was signed into law July 12, 1974, as Public Law No. 93-344.

Summary of the Act

The Act⁽¹²⁾ consists of 10 titles which, for purposes of explanation, can be grouped into categories (to be discussed more fully below), as follows:

Title I and title II established new committees on the budget in both the House and the Senate, and a Congressional Budget Office designed to improve Congress' informational and analytical resources with respect to the budgetary process.

Title III and title IV set forth a timetable and new procedures for various phases of the congressional budget process. Title V provides for a new fiscal year.

Title VI spells out the information to be included in the President's budget submissions and amends section 201 of the 1921 Budget and Accounting Act to so provide. The procedures for program review and evaluation are explained in title VII.

Title VIII provides for standardization of budget terminology and availability of information to Congress, while title IX sets out the effective date for various provisions of the Act.

Title X establishes procedures for congressional review of Presidential impoundment actions.

Budget Committees

The Act establishes a new standing committee in each House known as the Committee on the Budget. The rules of the House were amended to provide for the Committee on the Budget and membership thereon.⁽¹³⁾ The House Budget Committee was originally composed of 23 members: five from the Committee on Appropriations, five from the Committee on Ways and Means, 11 from other House standing committees and one member each from the majority and minority leadership.⁽¹⁴⁾ Membership on this committee was increased to 25, pursuant to a resolution of the House⁽¹⁵⁾ which provided for 13 members to be elected from other standing committees of the House.

11. See 119 CONG. REC. 13162, 13163, 93d Cong. 1st Sess., Apr. 18, 1973.

12. See 31 USC §§ 1301 et seq.

13. This committee was established pursuant to the Act (§ 101) in the 93d Congress effective July 12, 1974 (88 Stat. 299).

14. Rule X clause I(e)1, *House Rules and Manual* (1975).

15. H. Res. 5, 121 CONG. REC. 20-22, 94th Cong. 1st Sess., Jan. 14, 1975.

Budget Timetable

Title III of the Act⁽¹⁶⁾ establishes a timetable for various phases of the congressional budget

process, prescribing the actions to take place at each stage under the new procedure:

<i>On or before</i>	<i>Action to be completed</i>
November 10	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15	Committees and joint committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
May 15	Congress completes action on first concurrent resolution on the budget.
7th day after Labor Day	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15	Congress completes action on second required concurrent resolution on the budget.
September 25	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1	Fiscal year begins.

November 10: Current Services Budget

The first element in the timetable is the President's submission by Nov. 10 of the current services budget which estimates the outlays needed to carry on existing programs and activities for the following fiscal year. Its purpose is to provide Congress with detailed information with which to begin analysis and preparation of

the budget for the forthcoming year. Budget projections are then made by the Congressional Budget Office and the House and Senate Budget Committees based on the current fiscal year's levels. To facilitate evaluation of the President's projections, the Joint Economic Committee is required by the terms of the Act⁽¹⁷⁾ to report to the budget committees on the estimates and economic assump-

16. 31 USC §§ 1321 et seq.

17. 15 USC § 1024.

tions on the current services budget.

***15th Day After Convening:
President Submits Budget***

The President's budget is due to be submitted 15 days after Congress convenes.⁽¹⁸⁾ This date remains unchanged from previous practice. Shortly after its submission, the budget committees of both Houses begin hearings on the President's budget, the economic assumptions on which it is based, the national budget priorities, and the budget in general. Testimony is taken from Members of Congress, administration officials, representatives of national interest groups, and the general public, such as the committee deem fit.⁽¹⁹⁾

***March 15: Committee Reports
Submitted to Budget Committees***

A new aspect of the budget process is the requirement that each of the standing committees of the House and Senate submits its recommendations on the proposed budget as viewed by the particular committee. These views are given to the budget committees of the House or Senate and are due on Mar. 15, one month prior to the reporting date of the

first concurrent resolution on the budget.⁽²⁰⁾

The purpose of these reports is to provide the budget committees with an early and comprehensive indication of spending plans for the coming fiscal year. The reports contain the views and estimates of the committees and joint committees on budgetary matters within their jurisdiction, and their estimates of new budget outlays to be authorized by legislation within their jurisdiction during the following fiscal year.

***April 1: Congressional Budget
Office Submits Report to
Budget Committees***

The Congressional Budget Office is required to submit its report to the budget committees on or before Apr. 1.⁽²¹⁾ This report is primarily concerned with alternative budget levels and national budget priorities. It is the first of several required of the Congressional Budget Office. It is most significant, however, in that it is timed for use in the budget committees' deliberations on the first concurrent resolution on the budget, particularly with respect to committee discussions of national budget priorities.

18. 31 USC § 1321.

19. 31 USC § 1322(d).

20. 31 USC 1322(c).

21. 31 USC § 1321.

April 15: First Concurrent Resolution Reported

The budget committees must report the first concurrent resolution on the budget to Congress by Apr. 15.⁽¹⁾ This allows each House a maximum of one month for floor consideration, conferences, and the adoption of conference reports.⁽²⁾

The first concurrent resolution on the budget provides estimates and preliminary budget targets for fiscal year beginning on Oct. 1. It must set forth: (1) the appropriate level of total budget outlays and of total new budget authority; (2) an estimate of budget outlays and an appropriate level of new budget authority in various categories; (3) the amount, if any, of appropriate budget surplus or deficit; and (4) the recommended level of federal revenues and the amount, if any, by which the aggregate level of federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees.⁽³⁾

The report of the budget committee on the resolution compares its revenue estimates and outlay levels with the estimates and amounts in the President's budg-

et. It also identifies recommended sources of revenues, makes five-year budget projections, and spells out the economic assumptions and objectives of the resolution.⁽⁴⁾

The Act provides special procedures for House consideration of budget resolutions and conference reports on such resolutions. The Act also provides for important material to be included in the joint statement of managers accompanying the conference report. The joint statement must distribute the allocations of total budget authority and outlays contained in the resolution among the appropriate committees. For example, if the conference report allocates \$7 billion in budget authority and \$6 billion in outlays for the functional category "Community and Regional Development," the statement of managers must divide those amounts among the various committees with jurisdiction over programs and authorities covered by that functional category. Each committee to which an allocation is made must, in turn, further subdivide its allocation among its subcommittees or programs.

May 15: Reporting New Budget Authority; Completion of Action on First Concurrent Resolution

May 15 is the deadline for committees to report legislation au-

1. 31 USC § 1321.

2. 31 USC § 1322(d).

3. 31 USC § 1322.

4. 31 USC § 1322(d).

thorizing new budget authority.⁽⁵⁾ It is also the deadline for the adoption of the first budget resolution by Congress.⁽⁶⁾

Consideration of bills or resolutions authorizing new budget authority reported after May 15 is permitted in the House only if an emergency waiver reported by the Committee on Rules is adopted.⁽⁷⁾

The Budget Act sets forth special procedures by which the House is to consider budget resolutions and conference reports relating thereto. Such resolutions are initially considered in the Committee of the Whole. General debate is limited to 10 hours, and motions to further limit debate are not debatable. Under the original statute, the resolution was read for amendment under the five-minute rule by sections.⁽⁸⁾

After the Committee of the Whole has reported the resolution to the House, the previous question is considered as ordered on the resolution and amendments thereto to final passage without intervening motion. The only amendment in order under the Act prior to final passage is one effecting changes necessary to achieve mathematical consistency.⁽⁹⁾

5. 31 USC § 1352.

6. 31 USC § 1322.

7. 31 USC § 1352.

8. 31 USC § 1326.

9. *Id.*

Debate on the conference report on the resolution is limited to five hours.⁽¹⁰⁾

Seventh Day After Labor Day; Action on Measures Providing New Budget or Spending Authority

The seventh day after Labor Day is the recommended deadline for completing action on regular budget authority and entitlement bills.⁽¹¹⁾ The only exception to this requirement is for appropriation bills whose consideration has been delayed because necessary authorizing legislation has not been timely enacted.⁽¹²⁾

The Congressional Budget Office issues periodic reports on the status of measures providing new budget authority and revenue and debt legislation.⁽¹³⁾

September 15, 25; Action on Second Concurrent Resolution

Sept. 15 and 25 are the dates for the adoption of the second resolution and completion of the reconciliation process, the final legislative phase of the new budget process under the Act.⁽¹⁴⁾

10. *Id.*

11. 31 USC § 1330.

12. *Id.*

13. 31 USC § 1329.

14. 31 USC § 1331.

The completion of reconciliation actions on Sept. 25 brings the budget timetable to within five days of the new fiscal year—Oct. 1.

The importance of the timely completion of this phase of the budget process is underlined by the provision of the Act which states that Congress may not adjourn *sine die* unless such action is completed.⁽¹⁵⁾

The second resolution reflects changed economic circumstances, taking into consideration the spending authority exercised by Congress and the matters contained in the first resolution, namely the “target” levels of budget authority and outlays, total revenues, and the public-debt limit. In addition, the committees with jurisdiction over the recommended changes are directed to determine and recommend such changes to the House.⁽¹⁶⁾

After adoption of the second resolution and completion of the reconciliation process, it is not in order in either House to consider any new spending legislation that would cause the aggregate levels of total budget authority or outlays adopted in that resolution to be exceeded, nor to consider a

measure that would reduce total revenues below the levels in the resolution.⁽¹⁷⁾

It should be pointed out, however, that Congress may adopt a revision of its most recent resolution at any time during the fiscal year. In addition to the May and September resolutions, Congress may adopt at least one additional resolution each year, either in conjunction with a supplemental appropriations bill or in the event of sharp revisions in revenue or spending estimates brought on by major changes in the economy.⁽¹⁸⁾

Program Review and Evaluation

The budget committees of the House and Senate are directed to study budget proposals, including program analysis and evaluation and time limits on program authorizations.⁽¹⁹⁾ These committees also make continuing studies of “off budget” agencies and periodically report their findings and recommendations. An “off budget” agency is an agency of the federal government which is exempt from the President’s budget under the Budget and Accounting Act of 1921, section 201.⁽²⁰⁾

15. *Id.*

16. *Id.*

17. 31 USC § 1332.

18. 11. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

19. 31 USC § 1303.

20. 31 USC 11b.

Impoundment Controls

Impoundment control is a companion feature of the new budget control system. In the words of the House Committee on Rules' report on the budget reform legislation:

One without the other would leave the Congress in a weak and ineffective position. No matter how prudently Congress discharges its appropriations responsibility, legislative decisions have no meaning if they can be unilaterally abrogated by executive impoundments. On the other hand, if Congress appropriates funds without full awareness of the country's fiscal condition, its actions may be used by the President to justify [his] withholding of funds. By joining budget and impoundment control in a complete overhaul of the budget process [the bill], seeks to assure that the power of appropriation assigned to the Congress is responsibly and effectively exercised.⁽²¹⁾

Impoundment is a term used to describe situations wherein the executive branch declines to enter into obligations or commitments for the full amount of funds appropriated therefor by Congress.⁽¹⁾

The statute recognizes two types of impoundment actions by the executive branch: rescissions and deferrals.⁽²⁾

21. H. Rept. No. 93-658, 93d Cong. 1st Sess. (1973).

1. Levinson and Mills, Budget Reform and Impoundment Control, 27 Vand. L. Rev. 615 (1974).

2. 31 USC §§ 1400 et seq.

Rescissions must be proposed by the President whenever he determines that (1) all or part of any budget authority will not be needed to carry out the full objectives of a particular program; (2) budget authority should be rescinded for fiscal reasons; or (3) all or part of budget authority provided for only one fiscal year is to be reserved from obligation for that year. In such cases, the President is to submit a special message to the Congress requesting rescission of the budget authority, explaining fully the circumstances and reasons for the proposed action. Unless both Houses of the Congress complete action on a rescission bill within 45 days of the President's submission, the budget authority must be made available for obligation.⁽³⁾

Deferrals must be proposed by the President whenever any executive action or inaction effectively precludes the obligation or expenditure of budget authority. In such cases, the President is to submit a special message to the Congress recommending the deferral of that budget authority. The President is required to make such budget authority available for obligation if either House passes an "impoundment resolution" disapproving the proposed

3. 31 USC § 1402.

deferral at any time after receipt of the special message.⁽⁴⁾

Rescission and deferral messages are also to be transmitted to the Comptroller General who must review each message and advise the Congress of the facts surrounding the action and its probable effects. In the case of deferrals, he must state whether the deferral is, in his view, in accordance with existing statutory authority.”⁽⁵⁾

If budget authority is not made available for obligation by the President as required by the impoundment control provisions, the Comptroller General is authorized to bring a civil action to bring about compliance. However, such action may not be brought until 25 days after the Comptroller General files an explanatory statement with the House and Senate.⁽⁶⁾

“Backdoor” Spending

Under the Act new procedures were established for the enactment of contract and borrowing authority in order to promote a more comprehensive and consistent control over spending actions. The Act states that effective January 1976, new contract au-

thority and borrowing authority legislation, to be in order for consideration in either House, must contain a provision that such new authority is to be effective only to the extent or in such amounts as are provided in appropriations acts. In this manner, the Act prohibits the consideration of bills obligating certain types of new government spending in advance of the appropriations process. The Speaker has ruled, however, that such prohibition may be waived by a resolution reported as privileged from the Committee on Rules. The Speaker’s ruling, on Mar. 20, 1975,⁽⁷⁾ was based on the fact that the provisions of the Act in question were intended to state a rule of proceeding, and could therefore be waived or changed by the House at any time pursuant to its constitutional authority to “determine the Rules of its Proceedings.”⁽⁸⁾

The provisions of the Act described above do not apply to contract or borrowing authority in effect prior to January 1976, unless specifically implemented earlier, pursuant to section 906 of the Act.⁽⁹⁾

4. 31 USC §1403.

5. 31 USC §1404.

6. 31 USC §1406.

7. 121 CONG. REC. 7677, 94th Cong. 1st Sess., Mar. 20, 1975 (ruling by Speaker Carl Albert [Okla.]).

8. U.S. Const. art. I, section 5.

9. See 31 USC §1351.

Legislative Reorganization Act of 1946

§ 21.1 The House and Senate agreed to a provision of the Legislative Reorganization Act of 1946 which authorized certain House and Senate committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. This provision was repealed by the Legislative Reorganization Act of 1970.

On July 25, 1946, the House by voice vote agreed to⁽¹⁰⁾ and on July 26, 1946, the Senate by voice vote concurred in,⁽¹¹⁾ a House substitute to S. 2177, the Legislative Reorganization Act of 1946. Section 138 of the substitute directed certain Senate and House committees to meet jointly, report out a legislative budget, and submit a concurrent resolution adopting the budget. The text of the provision follows:⁽¹²⁾

10. 92 CONG. REC. 10047, 10051–53, 10075, 10077–80, 10104, 79th Cong. 2d Sess.

11. *Id.* at p. 10152. See also 92 CONG. REC. 6442 (text of section 130, the budget provision of the Senate bill), and 6577, 6578 (vote), 79th Cong. 2d Sess., June 7, and June 10, 1946, respectively.

12. This excerpt is taken from 60 Stat. 812, 832, 833 (Pub. L. No. 79–601). It was codified as 2 USC § 190e.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

That (a) this Act, divided into titles and sections according to the following table of contents, may be cited as the “Legislative Reorganization Act of 1946”: . . .

LEGISLATIVE BUDGET

Sec. 138. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, are authorized and directed to meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget recommendations of the President, report to their respective Houses a legislative budget for the ensuing fiscal year, including the estimated over-all Federal receipts and expenditures for such year. Such report shall contain a recommendation for the maximum amount to be appropriated for expenditure in such year which shall include such an amount to be reserved for deficiencies as may be deemed necessary by such committees. If the estimated receipts exceed the estimated expenditures, such report shall contain a recommendation for a reduction in the public debt. Such report shall be made by February 15.

(b) The report shall be accompanied by a concurrent resolution adopting such budget, and fixing the maximum

amount to be appropriated for expenditure in such year. If the estimated expenditures exceed the estimated receipts, the concurrent resolution shall include a section substantially as follows: "That it is the sense of the Congress that the public debt shall be increased in an amount equal to the amount by which the estimated expenditures for the ensuing fiscal year exceed the estimated receipts, such amount being \$."

Section 138 was repealed by approval of the Legislative Reorganization Act of 1970.⁽¹³⁾

Concurrent Resolution

§ 21.2 Pursuant to the Legislative Reorganization Act of 1946, the Senate and House agreed to a concurrent resolution expressing the judgment of Congress regarding levels of revenues and expenditures for the fiscal year 1949.

On Feb. 18, 1948, the Senate by voice vote,⁽¹⁴⁾ and on Feb. 27, 1948, the House by a vote of 315 yeas, 36 nays, 79 not voting,⁽¹⁵⁾

agreed to Senate Concurrent Resolution 42, expressing the sense of Congress as to the amount of revenues and expenditures for fiscal year 1949.

Resolved by the Senate (the House of Representatives concurring), That it is the judgment of the Congress, based upon presently available information, that revenues during the period of the fiscal year 1949 will approximate \$47,300,000,000 and that expenditures during such fiscal year should not exceed \$37,200,000,000, of which latter amount not more than \$26,600,000,000 would be in consequence of appropriations hereafter made available for obligation in such fiscal year.

Senate Concurrent Resolution 42 was considered under a special order of the Committee on Rules (H. Res. 485), which provided for consideration in the Committee of the Whole and waiver of all points of order. After general debate, which was confined to the concurrent resolution and limited to two hours, the concurrent resolution was considered as having been read for amendment.

13. 84 Stat. 1140, 1172 [see 2 USC § 242 (b) (1970)].

14. 94 CONG. REC. 1398, 1399, 1408, 80th Cong. 2d Sess.

15. *Id.* at pp. 1875, 1885–87. The House agreed to this concurrent resolution after rejecting by a vote of 73 yeas,

276 nays, not voting 81, a motion to recommit it to the Joint Committee on the Legislative Budget with instructions to strike out expenditures of \$37.2 billion and insert in lieu thereof \$36.7 billion.